

### **Remarks**

Claims 1-26 were pending in this application. Claims 1, 10, 22, and 24 have been amended, claim 8 has been canceled, and no claims have been added. Reconsideration of this application is respectfully requested in light of the above amendments and the following remarks.

Applicant wishes to thank the Examiner for extending the courtesy of a telephone interview on March 27, 2003. During this interview, the title of the invention, the double patenting rejection, and the art rejections were discussed as detailed below.

### **Specification**

The Examiner has objected to the title of the invention as not being descriptive. As agreed upon in the interview of March 27, 2003, the new title of "REUSABLE PRODUCE CRATE WITH DETACHABLE LID" is proposed herein. Accordingly, Applicant respectfully requests reconsideration and withdrawal of this objection.

### **Claim Objections**

On November 18, 2002, a telephone interview was initiated by the Examiner regarding clarification of the claim numbering in the application. As a result of the interview, Applicant notes that the Examiner has renumbered claims 59-84 and their dependencies as claims 1-26.

### **Double Patenting**

The Examiner has rejected claims 1-24 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-11, 13-14, and 22-25 of U.S. Patent No. 5,992,673. The Examiner has also rejected claims 1-24 under obviousness-type double patenting as being unpatentable over claims 1-9 and 4-32 of U.S. Patent No. 6,036,049. As agreed upon in the interview of March 27, 2003, pending further investigation

by the Examiner, Applicant is not required to supply a terminal disclaimer in response to the Office Action dated December 18, 2002.

**Rejection of Claims 1-3, 8, 10, and 12**  
**Under 35 U.S.C. § 102(b) Over Crate**

Claims 1-3, 8, 10, and 12 have been rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 3, 126,120 issued to Crate ("Crate").

As discussed during the telephone interview of March 27, 2003, the Examiner submits that the term "detachably" means that the lid can be detached from the container, "whether forcibly, by removing the hinge pins, or partially destroying the container" (Interview Summary dated April 1, 2003; Page 3). As such, the Examiner asserts that the claims are anticipated by Crate and the other cited art. Applicant respectfully disagrees with the Examiner's definition of the term "detachably" and therefore disagrees with the characterization of Crate and the other references cited below. However, while Applicant reserves the right to pursue the subject matter of independent claim 1 in a continuation application or on appeal, Applicant has amended claim 1 herein in order to further prosecution in this case.

In claim 1, Applicant now recites "the lid having at least one engaging member provided on the lid proximate the lid edge" wherein "when the lid is in a first position, the lid edge is pivotally attached to the pivot member and the lid is prevented from detaching from the pivot member due to cooperation of the pivot member and the at least one engaging member" and "when the lid moves to a second position approximately 180° from the first position, the at least one engaging member and the pivot member cooperate to allow the lid to become detachable from the pivot member."

In contrast to Applicant's claimed invention, Crate discloses only a container having a conventional lid affixed to the container by a snap hinge (*see* Crate, col. 1, lines 9-10 and 31-37). Crate does not disclose or suggest an engaging member which cooperates with a pivot member to prevent detachment of the lid in a first position and to allow detachment of

the lid in a second position approximately 180° from the first position as disclosed and claimed by Applicant. Accordingly, claim 1 is believed to be patentably distinguishable over Crate, and Applicant respectfully requests reconsideration and withdrawal of the rejection of claim 1 and its corresponding dependent claims under 35 U.S.C. § 102(b).

**Rejection of Claims 1-2 and 4-5**  
**Under 35 U.S.C. § 102(b) Over Jamison**

Claims 1-2 and 4-5 have been rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,673,791 issued to Jamison ("Jamison"). Although Applicant respectfully disagrees with the Examiner's characterization of Jamison, claim 1 has been amended as described above.

Jamison discloses lids R and L which are hinged to side walls 12 and 13, respectively, where "lids R and L operate in a manner similar to a conventional distribution tote by permitting the lids to be rotated approximately 270° about respective hinge joints 22 and 23" (*see* Jamison, col. 3, lines 52-57; col. 4, lines 10-13). Jamison does not disclose or suggest an engaging member which cooperates with a pivot member to prevent detachment of the lid in a first position and to allow detachment of the lid in a second position approximately 180° from the first position as disclosed and claimed by Applicant. Therefore, claim 1 is believed to be patentably distinguishable over Jamison, and reconsideration and withdrawal of the rejection of claim 1 and dependent claims 2 and 4-5 under 35 U.S.C. § 102(b) is also respectfully requested.

**Rejection of Claims 1-2 and 12**  
**Under 35 U.S.C. § 102(b) Over Robertson**

Claims 1-2 and 12 have been rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,146,650 issued to Robertson ("Robertson"). Although Applicant respectfully disagrees with the Examiner's characterization of this reference, claim 1 has been amended as described above.

Again, in contrast to Applicant's claimed invention, Robertson discloses a lid which is secured to the base regardless of the position of the lid. Robertson states:

In FIG. 3 lid 60 is being secured to base section 12 by its dowels 62 being urged inwardly against latch arms 42 deflecting them toward rear wall 18 as dowels 62 are slid upwardly therealong, until dowels 62 pass free ends 46 of latch arms 42 and enter slots 38 adjacent arcuate bearing surfaces 40 as shown in FIG. 4. Free ends 46 of latch arms 52 resile to closed positions entrapping dowels 62 within slots 38 and thus secure lid 60 to base section 12 without other fasteners or other means. In FIG. 5, lid 60 has been pivoted to a closed position with respect to base section 12; dowels 62 have rotated with respect to arcuate bearing surfaces 40, being held within slots 38 by free ends 46 of latch arms 42.

(see Robertson, col. 3, line 66 - col. 4, line 10)

Robertson does not disclose or suggest an engaging member which cooperates with a pivot member to prevent detachment of the lid in a first position and to allow detachment of the lid in a second position approximately 180° from the first position as disclosed and claimed by Applicant. Accordingly, Applicant believes that claim 1 is patentably distinguishable over Robertson, and respectfully requests reconsideration and withdrawal of the rejection of claim 1 and its corresponding dependent claims under 35 U.S.C. § 102(b).

**Rejection of Claims 13-14 and 17**  
**Under 35 U.S.C. § 103(a) Over Robertson and Webb**

Claims 13-14 and 17 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Robertson in view of U.S. Patent No. 4,685,567 issued to Webb ("Webb"). Claims 13-14 and 17 depend from and contain all the limitations of independent claim 1 which, for the reasons stated above, is believed to be patentably distinguishable over Robertson either alone or in combination with Webb. Accordingly, Applicant respectfully requests reconsideration and withdrawal of this rejection.

**Rejection of Claims 22-23**

**Under 35 U.S.C. § 103(a) Over Webb**

Claims 22-23 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Webb. Although Applicant respectfully disagrees with the Examiner's characterization of Webb as described above and reserves the right to pursue the subject matter of independent claim 22 in a continuation application or on appeal, Applicant has amended claim 22 herein in order to further prosecution in this case.

Specifically, claim 22 now recites a lid edge having at least one engaging member wherein "when the lid is in a first position, the lid edge is pivotally attached to the pivot member and the lid is prevented from detaching from the pivot member due to obstruction of the pivot member by the at least one engaging member" and "when the lid moves to a second position approximately 180° from the first position, the at least one engaging member no longer obstructs the pivot member and the lid becomes detachable from the pivot member."

In contrast, Webb discloses only a tote box having a cover attached thereto by a conventional hinge pin (*see* Webb, col. 3, lines 21-41). The Examiner admits that Webb is not explicit about removal of the lid, but asserts that it would have been obvious to provide removable lid portions by removing the pins of the container (Office Action dated December 18, 2002; Page 5). Applicant respectfully disagrees, and further asserts that Webb does not disclose or suggest an engaging member which obstructs a pivot member to prevent detachment of the lid in a first position and no longer obstructs the pivot member to allow detachment of the lid in a second position approximately 180° from the first position as disclosed and claimed by Applicant in amended claim 22. Accordingly, claim 22 is believed to be patentably distinguishable over Webb, and Applicant respectfully requests reconsideration and withdrawal of the rejection of claim 22 and dependent claim 23 under 35 U.S.C. § 103(a).

**Allowable Subject Matter**

Applicant appreciates the Examiner's indication that claims 6-7, 9, 11, and 18-21 would be allowable if the non-statutory double patenting rejection is overcome. Applicant

also appreciates the Examiner's indication that claims 24-26 would be allowable if rewritten to overcome the double patenting rejection and to include the limitations of the base claim. Applicant notes that claims 15 and 16 were not rejected herein, and therefore are presumed to be in allowable condition.

### **Conclusion**

In summary, Applicant believes that the claims, as amended, now meet all formal and substantive requirements and that the case is in appropriate condition for allowance. Accordingly, such action is respectfully requested. If a telephone conference would expedite allowance of the case or resolve any further questions, such a call is invited at the Examiner's convenience.

Please charge **\$110.00** to cover the Petition fee, and charge any additional fees or credit any overpayments as a result of the filing of this paper, to our Deposit Account No. 02-3978 -- a duplicate of this paper is enclosed for that purpose.

Respectfully submitted,

**PHILIP C. HWANG**

By Stephanie M. Mansfield  
Stephanie M. Mansfield  
Reg. No. 43,773  
Attorney/Agent for Applicant

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**BROOKS & KUSHMAN P.C.**  
1000 Town Center, 22nd Floor  
Southfield, MI 48075  
Phone: 248-358-4400  
Fax: 248-358-3351